

**IN THE
SUPREME COURT OF INDIANA**

ORDER AMENDING RULES OF TRIAL PROCEDURE

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, ***Rules 3, 4, 5, 15, 35, 45, 53.1, 75, and 79*** of the ***Indiana Rules of Trial Procedure*** are amended to read as follow (deletions shown by ~~striking~~ and new text shown by underlining):

Trial Rule 3. Commencement of an Action

A civil action is commenced by filing ~~a complaint~~ with the court a complaint or such equivalent pleading or document as may be specified by statute, by payment of the prescribed filing fee or filing an order waiving the filing fee, and, where service of process is required, by furnishing to the clerk as many copies of the complaint and summons as are necessary.

Trial Rule 4. Process

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(B) Preparation of summons and praecipe. Contemporaneously with the filing of the complaint or equivalent pleading, the person seeking service or his attorney shall ~~promptly prepare and~~ furnish to the clerk as many copies of the complaint and summons as are necessary. The clerk shall examine, date, sign, and affix his seal to the summons and thereupon issue and deliver the papers to the appropriate person for service. Affidavits, requests, and any other information relating to the summons and its service as required or permitted by these rules shall be included in a praecipe attached to or entered upon the summons. Such praecipe shall be deemed to be a part of the summons for purposes of these rules. Separate or additional summons shall, as provided by these rules, be issued by the clerk at any time upon proper request of the person seeking service or his attorney.

(C) Form of summons. The summons shall contain:

(1) The name and address of the person on whom the service is to be effected;

(2) The name, street address, and telephone number of the court and the cause number assigned to the case;

(3) The title of the case as shown by the complaint, but, if there are multiple parties, the title may be shortened to include only the first named plaintiff and defendant with an appropriate indication that there are additional parties;

(4) The name, address, and telephone number of the attorney for the person seeking service;

(5) The time within which these rules require the person being served to respond, and a clear statement that in case of his failure to do so, judgment by default may be rendered against him for the relief demanded in the complaint.

The summons may also contain any additional information which will facilitate proper service.

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Trial Rule 5. Service and Filing of Pleadings and Other Papers

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(E) Filing with the court defined. The filing of pleadings, motions, and other papers with the court as required by these rules shall be made by one of the following methods:

(1) Delivery to the clerk of the court;

(2) Sending by electronic ~~facsimile~~ transmission under the procedure adopted pursuant to Administrative Rule 12;

(3) Mailing to the clerk by registered, ~~or~~ certified or express mail, return receipt requested; ~~or~~

(4) Depositing with any third-party commercial carrier for delivery to the clerk within three (3) calendar days, cost prepaid, properly addressed; or

~~(4)~~ (5) If the court so permits, filing with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk.

Filing by registered or certified mail and by third-party commercial carrier shall be complete upon mailing or deposit.

Any party filing any paper by any method other than personal delivery to the clerk shall retain proof of filing.

Trial Rule 15. Amended and Supplemental Pleadings

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(C) Relation back of amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, ~~within the period provided by law for commencing one~~ hundred and twenty (120) days of commencement of the action ~~against him~~, the party to be brought in by amendment:

(1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits; and

(2) knew or should have known that but for a mistake concerning the identity of the proper party, the action would have been brought against him.

The requirement of subsections (1) and (2) hereof with respect to a governmental organization to be brought into the action as defendant is satisfied:

(1) In the case of a state or governmental organization by delivery or mailing of process to the attorney general or to a governmental executive [Rule 4.6(A)(3)]; or

(2) In the case of a local governmental organization, by delivery or mailing of process to its attorney as provided by statute, to a governmental executive thereof [Rule 4.6(A)(4)], or to the officer holding the office if suit is against the officer or an office.

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Trial Rule 35. Physical and Mental Examination of Persons

(A) Order for examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending

may order the party to submit to a physical or mental examination by a ~~physician~~ suitably licensed or certified examiner or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(B) Report of ~~examining physician~~ licensed or certified examiner.

(1) If requested by the party against whom an order is made under Rule 35(A) or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the ~~examining physician~~ examiner setting out his findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that he is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a ~~physician~~ an examiner fails or refuses to make a report the court may exclude his testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an ~~examining physician~~ examiner or the taking of a deposition of the ~~physician~~ examiner in accordance with the provisions of any other rule.

Trial Rule 45. Subpoena

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(E) Subpoena for a hearing or trial. At the request of any party subpoenas for attendance at a hearing or trial shall be issued by the clerk of court of the county in which the action is pending when requested, or, in the case of a subpoena for the taking of a deposition, by the clerk of court of the county in

which the action is so pending or in the county in which the deposition is being taken. An attorney admitted to practice law in this state, as an officer of the court, may also issue and sign such subpoenas on behalf of the court in which the action is pending or a court of the county in which the deposition is being taken, if the hearing, deposition or production pertains to an action pending in a court where the attorney has appeared for a party in that case. A subpoena may be served at any place within the state; and when permitted by the laws of the United States, this or another state or foreign country, the court upon proper application and cause shown may authorize the service of a subpoena outside the state in accordance with and as permitted by such law.

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Trial Rule 53.1. Failure to Rule on Motion

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(B) Exceptions. The time limitation for ruling on a motion established under Section (A) of this rule shall exclude any period after which the case is referred to alternative dispute resolution and until a report on the alternative dispute resolution is submitted to the court. The time limitation for ruling on a motion established under Section (A) of this rule shall not apply where:

(1) The Court, within thirty (30) days after filing, orders that a motion be considered during the trial on the merits of the cause; or

(2) The parties who have appeared or their counsel stipulate or agree on record that the time limitation for ruling on a motion shall not apply; or

(3) The time limitation for ruling has been extended by the Supreme Court as provided by Section (D) of this rule; or

(4) The ruling in question involves a repetitive motion, a motion to reconsider, a motion to correct error, a petition for post-conviction relief, or a ministerial post-judgment act.

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Trial Rule 60.5. Mandate of Funds

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(B) Procedure. Whenever a court, except the Supreme Court or the Court of Appeals, desires to order either a municipality, a political subdivision of the state, or an officer of either to appropriate or to pay unappropriated funds for the operation of the court or court-related functions, such court shall issue and cause to be served upon such municipality, political subdivision or officer an order to show cause why such appropriation or payment should not be made. Such order to show cause shall be captioned "Order for Mandate of Funds". The matter shall

be set for trial on the merits of such order to show cause unless the legislative body, the chief executive officer or the affected officer files a waiver in writing of such a trial and agrees to make such appropriation or payment.

The trial shall be without a jury, before a special judge of the court that made the order. There shall be no change of venue from the county or from the special judge appointed by the Supreme Court.

The court shall promptly notify the Supreme Court of the entry of such order to show cause and the Supreme Court shall then appoint a judge or attorney to act as special judge. ~~Such appointment shall be made from a panel of experienced and qualified judges and former judges maintained by the Court.~~ The special judge shall not reside in the county in which the petition is to be tried nor in a county bordering on such county. If the appointed judge fails to qualify within seven [7] days after he has received notice of his appointment, the Supreme Court shall follow the same procedure until an appointed judge does properly qualify.

Unless expressly waived by the respondent in writing within ~~two [2]~~ thirty (30) days after the entering of the trial judge's decree, a decree or order mandating the payment of funds for the operation of the court or court-related functions shall be automatically reviewed by the Supreme Court. Promptly on expiration of such ~~two [2]~~ thirty (30) days' day period, the trial judge shall certify such decree together with either a stipulation of facts or an electronic transcription of the evidence to the Supreme Court. No motion to correct error nor notice of appeal shall be filed.

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Trial Rule 75. Venue Requirements

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(B) Claim or proceeding filed in improper court.

(1) Whenever a claim or proceeding is filed which should properly have been filed in another court of this state, and proper objection is made, the court in which such action ~~or proceeding~~ is filed shall not then dismiss the ~~same action~~, but shall order ~~said cause~~ the action transferred to the court in which it should have been filed.

(2) The person filing ~~such claim or proceeding~~ the action shall, within twenty (20) days, pay such costs as are chargeable upon a change of venue and the papers and records shall be certified to the court of transfer in like manner as upon change of venue. ~~Such and the~~ the action shall be deemed commenced as of the date of filing the action in the original court.

(3) If the party filing the action does not pay the costs of transfer within twenty (20) days of the order transferring venue, the original court shall dismiss the action without prejudice and shall order payment of reasonable attorney fees to the party making proper objection.

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(E) Appeal. An order transferring or refusing to transfer a case under this rule shall be an interlocutory order appealable pursuant to Appellate Rule ~~4(B)(5)~~ 14(A)(8); provided, however, that the appeal of an interlocutory order under this rule shall not stay proceedings in the trial court unless the trial court or the Court of Appeals so orders.

Trial Rule 77. Court Records

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(D) Record of judgments and orders (order book). The clerk of the circuit court shall maintain a daily, verbatim, printed compilation of all judgments of the court, designated orders of the court, orders and opinions of an appellate tribunal relating to a case heard by the court, local court rules under Trial Rule 81, certification of the election of the regular judge of the court, any order appointing a special judge, judge pro tempore, or temporary judge, the oath and acceptance of any judge serving in the court, any order appointing a special prosecutor, and the oath and acceptance of a special prosecutor. ~~Each day's compilation shall be certified as true and complete by the judge exercising jurisdiction of the court on that day which may be accomplished by attaching to the daily, verbatim, printed compilation a certification sheet attesting that the designated material constitutes the complete record of the court as required under this provision; the certification sheet shall further set forth the court, the date involved, the authority of the judge to serve on the date in question, and the page numbers included in the compilation. The certification sheet shall be signed by the judge exercising jurisdiction; however, the regular judge of the court can attest to the entries of special judges or temporary judges.~~ At regular intervals to be determined by the court, the daily compilations shall be assembled in a bound binder which bears the name of the court, the volume number assigned, and the time period included in the assembled compilations.

The clerk may maintain a separate record of judgments and orders as required for the functional management of the court's business. A separate record of judgments and orders for confidential materials shall be maintained as required by law.

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**Trial Rule 79. Special Judge Selection: Circuit, Superior, Probate,
Municipal, and County Courts**

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(J) Eligibility. Any regular judge of a Circuit, Superior, Probate, Municipal, or County Court, a senior judge, or a person serving as magistrate in a court of record, including a person who has been a member of a panel for selection, is eligible for appointment by a trial court as a special judge unless this judicial official:

(1) has previously served as judge or special judge in the case; except that whenever a court has granted an order for a change of venue to another county, the judge granting the change of venue may be appointed as special judge for that cause in the receiving county if the judge granting the change, the receiving judge, and all of the parties to the cause agree to such appointment;

(2) is disqualified by interest or relationship; or

(3) is excused from service as special judge by the Indiana Supreme Court.

A special judge need not be a resident of the county where the case is pending, but accessibility should be considered in making the selection. Senior judges shall be eligible for service as special judge only in courts in which the senior judge is currently appointed by the Indiana Supreme Court to serve as senior judge.

(K) Appointment by Indiana Supreme Court. Upon the certification of a request for appointment of a special judge under Trial Rules 53.1, 53.2, 60.5, I.C. 34-13-5-4, as added by P.L.1-1998, SEC.8, governing public lawsuits, and this rule, the Supreme Court may appoint any person eligible for service under Section (J) or any member of the Bar of this state as special judge. The order of appointment of a special judge by the Indiana Supreme Court shall be entered in the Chronological Case Summary and Record of Judgments and Orders and served on all parties in the proceeding in accordance with Trial Rule 72(D) by the Clerk of the trial court. Such order vests jurisdiction in the special judge, and an oath shall only be required for members of the Bar appointed under this Section.

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(P) Compensation. A full-time judge, magistrate, or other employee of the judiciary shall not be paid a special judge fee for service as a special judge. A senior judge shall be paid a special judge fee pursuant to Ind.Administrative Rule 5. All other persons serving as special judge shall be paid a special judge fee of twenty-five dollars (\$25.00) per day for each jurisdiction served for the entry of judgments and orders and hearings incidental to such entries. Persons residing outside the county where service is rendered shall be entitled to mileage at a rate

equal to other public officials as established by state law, hotel accommodations, and reimbursement for meals and other expenses. Compensation for special judge services shall be paid by the State upon presentation of a claim for such services. ~~Senior Judges who serve as special judges shall be paid in accordance with a schedule published by the Executive Director of the Division of State Court Administration.~~

These amendments shall take effect April 1, 2002.

The Clerk of this Court is directed to forward a copy of this order to the Clerk of each Circuit Court in the state of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; the libraries of all law schools in this state; the Michie Company; and the West Group.

The West Group is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this _____ day of December, 2001.

Randall T. Shepard
Chief Justice of Indiana

All Justices concur.

